

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

UNITED STATES OF AMERICA)
)
 vs.)
)
GREG E. LINDBERG,)
)
 Defendant.)

TRANSCRIPT OF MODIFICATION OF CONDITIONS OF RELEASE
BEFORE THE HONORABLE DAVID S. CAYER
UNITED STATES MAGISTRATE JUDGE
AUGUST 13, 2019

APPEARANCES:

On Behalf of the Government:

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On Behalf of the Defendant:

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United States District Court
Charlotte, North Carolina

P R O C E E D I N G S

(Transcript of proceedings digitally recorded on
August 13, 2019.)

THE COURT: United States versus Greg Lindberg.

Good morning, Ms. Tompkins.

MS. TOMPKINS: How are you?

THE COURT: I'm well.

Mr. Stetzer.

MR. STETZER: Good morning, sir.

THE COURT: Ms. Tompkins, this is your motion to
modify his conditions of pretrial release so I'll hear from
you.

MS. TOMPKINS: Thank you, Your Honor.

Yes, we are on for modification of Mr. Lindberg's
conditions of release. There are four main points that I want
to make this morning.

One is Mr. Lindberg was ordered to wear an ankle
monitor on April 2nd when we came in for initial appearance.
In practice, over the last four months that ankle monitor has
proven to be more restrictive than necessary to ensure his
appearance at trial.

In addition -- and I'll talk a little bit more about
that -- I'd like to talk about Mr. Lindberg's strong
incentives to appear at trial. Since the first conversation
that he had with the FBI almost a year ago last August,

1 Mr. Lindberg has maintained his innocence. He wants to have
2 his day in court. He's motivated to have his day in court.
3 This has not changed during our review of discovery up to this
4 point. We have a strong case against the allegations and
5 Mr. Lindberg very much looks forward to clearing his name.

6 There have been issues with discovery, technical
7 issues, delay, and some volume that were unanticipated when we
8 agreed to the conditions of release four months ago. That --
9 those I'll talk about if the Court is interested, but those
10 have resulted in the necessity for us to delay the trial well
11 beyond what we would have thought four months ago when we
12 first came in and agreed to the conditions of release.

13 Separately, then, from the electronic monitoring
14 issue, Mr. Lindberg was also ordered to have random drug
15 screening. Mr. Lindberg neither drinks or uses drugs and we
16 would simply ask the Court to remove that as a condition of
17 his release as being unnecessary.

18 So I'd like to argue the points.

19 So as you know, Your Honor, federal law requires
20 that the Court use the most least -- the least restrictive
21 means necessary to ensure Mr. Lindberg's appearance at court.
22 In April Mr. Lindberg turned in his passport. He was ordered
23 not to travel internationally, and has not and has no
24 intention to travel internationally.

25 Mr. Lindberg has access to two private planes.

1 Those planes are under charter now. He doesn't use them in
2 any way. He also has a boat that's also under charter which
3 he also does not use.

4 So other than that restriction, the -- turning in
5 the passport and international travel, Mr. Lindberg has no
6 other restrictions on his travel in the United States. The
7 only restriction he has is to get permission from his pretrial
8 services officer.

9 He's on pretrial supervision in the Southern
10 District of New York where he lives. He has complied. His
11 pretrial officer has stated to us that he has been a model
12 client. He has no trouble with Mr. Lindberg's travel in the
13 way that he has sought permission and gotten permission to
14 travel, and he has no objection to the ankle monitor being
15 removed as a condition of his supervision.

16 He does, however -- and I have an email to that
17 effect. If Your Honor would like to see that, I'll hand it
18 up. He does note, however, that he -- this is not his
19 jurisdiction and so he defers to his local pretrial services
20 officer for her point of view. We contacted her. She also
21 had no objection, but said she would leave it, obviously, to
22 the Court's decision. So pretrial, we would contend to the
23 Court, has no issue with removing the ankle monitor.

24 One of the primary reasons that we think it's --
25 that the ankle monitor is not the least restrictive means to

1 ensure Mr. Lindberg's appearance at trial is you would
2 normally see an ankle monitor used in instances where there is
3 a geographic restriction. The ankle monitor provides the
4 government with a level of electronic surveillance that they
5 need. If Mr. Lindberg was ordered to house arrest, the
6 electronic monitoring would alert if he left that area of
7 geographic restriction.

8 In practice, Mr. Lindberg has no geographic
9 restriction. Therefore, the ankle monitor doesn't engage in
10 any way that informs the government in a manner that would,
11 frankly, help them to know where he is or whether or not he
12 was attempting to flee, which we would argue he is not.

13 Therefore, Mr. -- you know, the -- Mr. Lindberg's
14 ankle bracelet really acts as a stalking device only. It does
15 not act in the usual way that you would see an electronic
16 monitor. We had that conversation when we first came in here
17 in April with Judge Keesler about how it was going to be used;
18 and at that time the government said, "We are not seeking a
19 geographic limitation, but we want the ankle monitor."

20 That was before we had seen the indictment, we had
21 seen any discovery. We agreed to it. And in the four months
22 hence, we simply want to come back to the Court and say it, in
23 practice, is impractical and it doesn't add to the protection
24 that the government, we think, sought in April to ensure
25 Mr. Lindberg's appearance.

1 So after four months we wanted to come back and say
2 the bracelet gives the government no additional information
3 that it is seeking. It is not being used in the normal set of
4 circumstances.

5 Mr. Lindberg's incentive to appear is very strong.
6 Like his three co-defendants, he has pled guilty. The case is
7 going to trial -- I mean pled not guilty. Pled not guilty.
8 He wants his day in court and he will have his day in court.
9 As I said initially, he has maintained his innocence since the
10 first day that the case came to light and he spoke to the FBI.

11 The Court may know that these allegations involve
12 campaign contributions that Mr. Lindberg made to the North
13 Carolina Department of Insurance Commissioner. We've now
14 reviewed some of that discovery, including audio and video
15 evidence, and we contend that it's far from an open-and-shut
16 case. In fact, there are multiple examples on the audio and
17 video where Mr. Lindberg is in conversations with the
18 insurance commissioner where Mr. Lindberg insists on
19 compliance with the law. Those are not the actions of a
20 person who wishes to flee. This -- these are the -- those are
21 the words of a person who now wishes to stand and defend
22 himself and stand and fight. Mr. Lindberg is extremely
23 motivated to be here to go to trial and to be exonerated of
24 these charges. He has no incentive to flee.

25 The discovery in the case has turned out to be much

1 more voluminous than we anticipated. In fact -- in technical
2 difficulties and delays. And at every turn, even with the
3 audio and video, we got that about three weeks after his
4 initial appearance, and there were -- there was weeks' worth
5 of back and forth about making the audio and video work just
6 because of technical difficulties.

7 We've gotten maybe four different groups of
8 discovery from the government, the bulk of which has come in
9 July and in July we received approximately 1.2 million
10 documents. This obviously has caused us to ask the Court for
11 a delay in the trial. We are currently on the November trial
12 calendar. Not sure whether or not we'll make that -- that
13 calendar for trial or whether we'll -- there will be necessity
14 for a further delay. And I bring that to light because of the
15 length of time that Mr. Lindberg is on a level of pretrial
16 supervision that really exceeds the standard for ensuring his
17 appearance in court.

18 So for these reasons, Your Honor, we ask for his
19 conditions of release to be modified in those two ways: To
20 remove the ankle bracelet and to take away the necessity for
21 him to have random drug testing.

22 And I will hand up, Your Honor, email traffic from
23 his local Pretrial Services Officer Sarah Wright and from
24 Marlon Ovalles who is his pretrial services officer in the
25 Southern District of New York.

1 Yes, I'll give them a copy.

2 (Document tendered to the Court.)

3 MS. TOMPKINS: Thank you, Your Honor.

4 And, Your Honor, if I just may, just to put into the
5 record, what Officer Ovalles said on page 3 of his email, he
6 says, "If this case were to be stemming from the Southern
7 District of New York, I would say that pretrial consents to
8 the removal of the location monitoring as well as the drug
9 testing condition. I would also recommend that he be allowed
10 to travel throughout the continental United States without
11 prior approval from pretrial services. However, since this
12 case stems from the Western District of North Carolina, I
13 defer to Officer Sarah Wright on their position on the
14 request. I've included Officer Wright in my response."

15 Officer Wright's response was, "No objection. We
16 would leave it up to the Court."

17 Thank you.

18 THE COURT: What does the government say?

19 MR. STETZER: The government opposes this request,
20 Your Honor. The reason he's on such -- given such latitude on
21 his travel is because of the GPS monitor. The reason the
22 government didn't seek detention in this matter is because of
23 the agreement for the GPS monitor.

24 If we go to the threshold question for Your Honor
25 about reopening this detention hearing, is first we'd have to

1 look at whether there were facts that were unknown to the
2 movant at the time. And those facts were not unknown. Those
3 facts were obvious. That this case wouldn't be resolved in
4 under four months was certainly obvious to counsel as esteemed
5 as Ms. Tompkins. In fact, it was so obvious that we
6 negotiated that as part of our recommendation not to seek
7 detention. We talked about the travel restrictions and no
8 seeking detention in exchange for the GPS monitoring.

9 Ms. Tompkins specifically -- and I say this not
10 because I believe the Court is bound by our agreement, but
11 because it shows how foreseeable and how known these facts
12 were. Ms. Tompkins sent me a letter saying take a look at
13 these conditions. It includes the conditions that we're
14 currently under now, but also said that after a period of
15 compliance with the GPS monitoring, we can revisit that with
16 the Court. The government responded that was a nonstarter and
17 the primary reason we weren't seeking detention was because of
18 the GPS monitor. And so that's important to show that the
19 facts -- these are not new facts or unknown.

20 If we deal with changes or information that would
21 deal with flight, well, first, I think if the Court is going
22 to reopen detention status, the Court should also revisit the
23 travel restrictions. If the GPS monitoring is in jeopardy,
24 then that should be considered by the Court.

25 The Court should also consider, and I would ask the

1 Court to consider, if the GPS is in jeopardy, to detain this
2 defendant until we have our trial.

3 The circumstances that have changed are more
4 concerning regarding the defendant's flight. I have informed
5 counsel from the beginning that I believe this defendant would
6 be a flight risk and that's why we insist on the GPS
7 monitoring.

8 As Ms. Tompkins mentioned, the defendant does have
9 access to -- owns a private jet that is capable of traveling
10 anywhere in the world. The yacht mentioned is a 214-foot
11 ocean-going vessel that's registered in the Cayman Islands, so
12 this defendant can actually flee by land or by sea.

13 He has -- as of 2016 he had 115 foreign bank
14 accounts, including in Canada, India, Ireland, Malta, the
15 Philippines, England, and the Cayman Islands.

16 When he was confronted by the FBI with these
17 allegations, within 30 days of that is when he bought this
18 214-foot vessel. And shortly thereafter he listed just about
19 all of his assets for sale, including his residences in North
20 Carolina, Key West, and properties in Idaho, so he immediately
21 began liquidating his assets. We had a conversation with Ms.
22 Tompkins about that and were given some assurances. That
23 raises the level of concern for the government given now that
24 we want to take off the GPS monitoring.

25 Mr. Lindberg is also aware of an ongoing parallel

1 investigation involving his business structure. He is not a
2 resident of the Western District. We capitulated in the
3 negotiation to allow him to reside in New York in that
4 district. He had to pick a district. But he also had at that
5 time when we talked about it, he had significant business
6 interests in North Carolina and elsewhere. Since then his
7 insurance companies have been placed in rehabilitation by the
8 Department of Insurance. The insurance commissioner says he
9 wrote to shareholders or to policyholders. He took that
10 action after determining that the long-term liquidity of the
11 investment portfolios of the company had deteriorated to the
12 point that the Department of Insurance needed to act to
13 protect the policyholders of the company.

14 He's facing a guideline level of 32 with a sentence
15 of 121 to 151 months in prison. So our contention is this
16 defendant has the resources to flee and flee well, unlike the
17 vast majority of defendants who appear in front of you.

18 In addition, if he was to flee, it would cause
19 irreparable harm to the policyholders and the states that
20 would have to bail out his insurance companies if he fled and
21 took those assets with him.

22 Our evidence in the case involves recordings where
23 the Department of Insurance Commissioner Mike Causey was so
24 concerned at the behavior of Mr. Lindberg a year and a half
25 ago that he came to the U.S. Attorney's Office and said, "I

1 think this guy is trying to bribe me." That's what started
2 the investigation.

3 After that point, when Commissioner Causey met with
4 Lindberg, those recordings -- those meetings were recorded.
5 So we have the quid pro quo that we've alleged on tape by
6 Mr. Lindberg on more than one occasion, so we believe our case
7 is strong.

8 The gist of this case, as we allege, is that because
9 Mr. Lindberg did not like the way and the level he was being
10 regulated by the Department of Insurance, by the chief
11 regulator on his review, essentially, he was willing to pay
12 \$2 million to have that person removed as his regulator. So
13 our contention is if he's willing to pay \$2 million not to
14 face regulation, what would he be willing to do not to face a
15 lengthy prison sentence?

16 So we would -- we would strongly oppose him being
17 taken off the GPS monitoring. And we would ask if the Court
18 is considering that, to also consider what -- what would be
19 appropriate to make sure this defendant does appear for trial,
20 and I think that would have to include adding travel
21 restrictions and potentially detention.

22 THE COURT: Ms. Tompkins.

23 MS. TOMPKINS: Well, Your Honor, the Court is always
24 able to review conditions of release, whether the government
25 agrees with that or not.

1 As I said, when we did make that agreement with the
2 government, we hadn't seen the indictment. We hadn't seen any
3 discovery. It was really sort of a package that we agreed on
4 before we knew what the facts of the case were. We obviously
5 disagree with the characterization of the strength of the
6 case, as apparently the other three co-defendants do. The
7 case is set for trial.

8 Listen, I think, you know, the liquidating assets
9 argument is spurious. As I said to the government early on,
10 Mr. Lindberg lives in New York. He's put assets up, his home,
11 for sale, as people do. It's not an indication at all of him
12 fleeing, and I think the government was -- was assuaged by
13 that months ago and it's unfair to bring it up today.

14 The idea of the insurance companies being in
15 rehabilitation is really, I think, not a huge issue here, but
16 I would point out to the Court that the insurance companies
17 being in rehabilitation take those assets outside of
18 Mr. Lindberg's control and he doesn't have access to money or
19 assets from the insurance companies which really lessens the
20 government's concerns about Mr. Lindberg using his wealth to
21 flee.

22 And again, the -- his planes and his boat are under
23 a -- are chartered. The government has tracked his planes and
24 he's not on them. I mean, he doesn't use them, so these
25 are -- these are -- and they have the ability to track his

1 planes.

2 My point here today, the main point, is that for
3 four months Mr. Lindberg has generally been two or three
4 places, New York where he lives, North Carolina where his
5 businesses are. The insurance companies are not his only
6 business interests. He has -- he has dug in in Durham as a
7 businessman. He goes -- he has occasional business trips
8 elsewhere in the country.

9 His pretrial services officer has had not a speck of
10 trouble with him and has no concerns that he is a flight risk.
11 I think that's compelling to this Court that the two
12 professionals who are -- who are charged with monitoring him
13 are comfortable with Mr. Lindberg's ability to make his way to
14 court when required to.

15 So the parallel investigation has been known to
16 Mr. Lindberg and to counsel since day one. That's not a
17 changed circumstance. There's nothing about that that coming
18 in today is any bigger of a risk than it was four months ago.

19 So I think that the practical situation here is that
20 four months in the electronic monitoring is simply not being
21 used in an effective way that assists the government or the
22 Court to get Mr. Lindberg in court. It feels symbolic of
23 control but not, in fact, helpful in making sure that
24 Mr. Lindberg shows up for court; and, like his pretrial
25 services officers, we ask the Court to remove that as a

1 condition of his release.

2 THE COURT: Mr. Stetzer, anything further?

3 MR. STETZER: No, Your Honor.

4 THE COURT: All right. The Court is going to deny
5 the motion.

6 (End of proceedings.)

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1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NORTH CAROLINA
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19 Cheryl A. Nuccio, RMR-CRR
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